

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DESMOND KINDLE, #236863,

Petitioner,

v.

CASE NO. 2:12-CV-15139  
HONORABLE VICTORIA A. ROBERTS

MITCH PERRY,

Respondent.

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**OPINION AND ORDER DISMISSING THE PETITION FOR A WRIT OF  
HABEAS CORPUS AND DENYING A CERTIFICATE OF APPEALABILITY**

The Court has before it Michigan prisoner Desmond Kindle's *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Petitioner Kindle did not pay the required filing fee when he filed his habeas petition, nor did he submit an application to proceed *in forma pauperis*. See 28 U.S.C. § 1914(a); 28 U.S.C. § 1915; Rule 3 of the Rules Governing § 2254 Cases. The Court, therefore, issued an Order to Correct Deficiency on November 27, 2012 requiring Petitioner Kindle to either pay the filing fee or submit a properly completed *in forma pauperis* application. The order provided that if he did not do so within 21 days, his case would be dismissed. The time for submitting the filing fee or required information has elapsed and Petitioner Kindle has failed to correct the deficiency. Accordingly, the Court **DISMISSES WITHOUT PREJUDICE** the petition for a writ of habeas corpus. The Court makes no determination as to the merits of the petition. This case is **CLOSED**.<sup>1</sup>

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<sup>1</sup>The Court notes that Petitioner Kindle, through counsel, has filed another habeas petition with this Court which is currently pending. See *Kindle v. Perry*, No. 12-CV-15269 (E.D. Mich.) (Cohn, J.). This dismissal is also without prejudice to that filing.

Before Petitioner Kindle may appeal the Court's decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a federal court denies relief on procedural grounds without addressing the merits of a habeas petition, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Reasonable jurists could not debate the correctness of the Court's procedural ruling. Accordingly, the Court **DENIES** a certificate of appealability.

**IT IS SO ORDERED.**

S/Victoria A. Roberts

Victoria A. Roberts  
United States District Judge

Dated: January 9, 2013

The undersigned certifies that a copy of this document was served on the attorneys of record and Desmond Kindle by electronic means or U.S. Mail on January 9, 2013.

S/Carol A. Pinegar  
Deputy Clerk